



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX – PACIFIC SOUTHWEST REGION
75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 26 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7001 0320 0002 0254 5056

Mr. Randall E. DeVaul, P.E.
Director
Utilities Department
Water Reclamation Facility
2580 Betty Lane
North Las Vegas, Nevada 89030

Re: Order CWA-309(a)-15-011
City of North Las Vegas
NPDES Permit No. NV0023647

Dear Mr. DeVaul:

Enclosed please find a Finding of Violation and Administrative Order (order), which requires the City of North Las Vegas to comply with federal pretreatment requirements. The U.S. Environmental Protection Agency, Region 9 (EPA) is issuing this order in response to the findings of a pretreatment compliance inspection (PCI) of North Las Vegas' Pretreatment Program conducted by PG Environmental, LLC, and EPA Region 9 on September 29-30, 2014. Enclosed is an original copy of order CWA-309(a)-15-011 issued pursuant to Section 309 of the Act, which details the findings.

EPA performed its inspection in September 2014, as part of the national compliance monitoring strategy for the pretreatment program. The inspection and the findings made in the PCI report revealed that the City of North Las Vegas' pretreatment program had significant deficiencies, many of which may result in inadequate or compromised treatment at the industrial users, unidentified violations, and inadequate recordkeeping and monitoring of industrial users.

As a result, the order sets a time schedule to submit an Industrial Pretreatment Program (IPP) with interim submissions to EPA for its review and comment on components of the program. After EPA's comments have been satisfactorily addressed, the City of the North Las Vegas shall submit the complete IPP to its City Council and then to EPA for final review and approval. We expect that some of the key outcomes of the order will be that the City of North Las Vegas: updates its Sewer Use Ordinance, reevaluates its local industrial user discharge limits, corrects permit errors by re-permitting all significant industrial users, audits and corrects its compliance program, and continues to implement a pretreatment program in accordance with federal regulations and its NPDES permit. Detailed requirements necessary to comply are contained in the enclosed order.

The key dates for compliance activities in this order are as follows:

KEY DATES	ADMINISTRATIVE ORDER CWA-309(a)-15-011
October 1, 2015	Submit an IPP inventory list of all non-domestic users, including current information on the source, nature and volume of the discharges.
November 1, 2015	Submit a preliminary report.
December 1, 2015	Submit a draft comprehensive Headworks Analysis Report for local limits.
December 1, 2015	Submit a detailed description of program structure and procedure for administering a program pertaining to control mechanism and compliance monitoring.
January 1, 2016	Submit a final comprehensive Headworks Analysis Report for local limits
January 1, 2016	Submit an Enforcement Response Plan with detailed procedures describing how the City of North Las Vegas will investigate and respond to instances of industrial user noncompliance
January 1, 2016	Submit a plan that shows adequate funding and resources to support the program.
January 1, 2016	Submit updated multi-jurisdictional agreements.
March 1, 2016	Revise draft IPP as per EPA's comments and submit the IPP to the City Council for approval.
April 15, 2016	Submit to EPA a complete Industrial Pretreatment Program submission for approval.

We thank you for your cooperation during the pretreatment compliance inspection and the evaluation of your program. We look forward to working with you in making improvements to your pretreatment program. If you have any questions regarding this matter, please contact Ms. Michelle Josilo of my staff at (415) 972-3016 or josilo.michelle@epa.gov.

Sincerely,



Kathleen H. Johnson
Director
Enforcement Division

Enclosure

cc: Dave N. Commons, City of North Las Vegas

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

IN THE MATTER OF:

City of North Las Vegas
2580 Betty Lane
North Las Vegas, NV 89030
NPDES Permit No. NV0023647

Proceeding pursuant to § 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

**ADMINISTRATIVE COMPLIANCE
ORDER**

CWA-309(a)-15-011

The following Administrative Compliance Order ("Order") is issued pursuant to Section 309(a) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator of Region 9, EPA and further redelegated to the Director, Enforcement Division, EPA, Region 9.

LEGAL AUTHORITY

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
3. "Discharge of a pollutant" is defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
4. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
5. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

6. "Publicly Owned Treatment Works" or "POTW" is a treatment works as defined by Section 212 of the CWA, which is owned by a State or municipality.
7. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and "waters of the United States" is defined by 40 Code of Federal Regulations ("C.F.R.") § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
8. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System ("NPDES") permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
9. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized the State of Nevada Division of Environmental Protection ("NDEP") to directly administer the NPDES program in Nevada. Accordingly, any person who discharges pollutants from a point source to waters of the United States within the State of Nevada must first obtain a Nevada National Pollutant Discharge Elimination System permit, and must comply with all of its terms.
10. Under Section 307(b) of the Act [33 U.S.C. § 1317(b)], EPA promulgated the general pretreatment regulations in the Code of Federal Regulations at Title 40, Part 403 (40 CFR Part 403) that apply to POTWs as well as to the industrial users that discharge their non-domestic wastewaters into the POTWs.
11. In accordance with the Act and its implementing regulations at 40 C.F.R. § 403.8(f), a POTW with a design flow greater than five million gallons per day ("MGD") that receives pollutants from an industrial user ("IU") which pass through or interfere with the operation of the POTW, or are otherwise subject to pretreatment standards, is required to develop a pretreatment program that complies with the General Pretreatment Regulations at 40 C.F.R. Part 403.
12. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation implementing such section in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. The City of North Las Vegas ("Respondent") is a municipality, and is therefore a "person" within the meaning of the CWA.

14. Respondent operates the City of North Las Vegas Water Reclamation Facility ("North Las Vegas WRF" or the "Facility"). The Facility, located at 2580 Betty Lane, Las Vegas, Nevada, is a publicly owned treatment works ("POTW"). The Facility is a point source which discharges pollutants from Outfall 001 via the concrete lined Sloan Flood Control Channel to the Las Vegas Wash and from Outfall 002 to the Las Vegas Wash, a water of the United States. Therefore, Respondent is subject to the provisions of the CWA.
15. The North Las Vegas Water Reclamation Facility is a POTW with a permitted flow of 25 MGD and receives a discharge from at least one IU which is subject to the pretreatment standards promulgated pursuant to Section 307(b) of the Act. Therefore, Respondent is required to have an EPA-approved pretreatment program.
16. The NDEP issued a Nevada NPDES permit (Permit No. NV0023647) pursuant to Section 402 of the CWA to Respondent for the discharge of pollutants from its Facility. By its own terms, the permit became effective on April 1, 2015, and expires on March 31, 2020. Previous to the currently issued permit, Respondent was subject to a NPDES permit effective April 12, 2010, and expired on April 11, 2015. Part I.A.18. of the prior permit required (and Part B. PT. of the current permit requires) the Respondent to implement and enforce a pretreatment program under 40 CFR 403 and be responsible for and liable for the performance of all Control Authority pretreatment requirements contained in Part 403.
17. Respondent completed construction of the Water Reclamation Facility in 2011 however the City did not update its existing Sewer Use Ordinance (SUO). Therefore, the SUO does not identify the WRF as a wastewater treatment facility, provide the City with the proper legal authority to include its WRF in its "system" (as defined in the SUO), or contain industrial user discharge limits that were developed for the WRF's treatment capacities.
18. Prior to completion of the North Las Vegas WRF in 2011, untreated domestic and industrial wastewater in the Respondent's service area was conveyed to the City of Las Vegas and to Clark County for treatment. The SUO is based on two separate sets of local limits adopted sometime between 1994 and 1996; one for flows to City of Las Vegas and one for flows to Clark County.
19. On September 29-30, 2014, EPA and its contractor PG Environmental LLC, conducted a pretreatment compliance inspection ("inspection") of the Respondent's industrial pretreatment program to determine compliance with the requirements in its NPDES permit and the General Pretreatment Regulations at 40 CFR Part 403.
20. On March 6, 2015, EPA provided a copy of its inspection report to Respondent with the results of the inspection and requested a response to the findings by March 30, 2015. Results of the inspection include, but are not limited to, the following findings:
 - (a) Respondent has not identified and located all possible industrial users, in accordance with 40 CFR 403.8(f)(2)(i) and Part I.A.18(c) of its 2010 NPDES permit;
 - (b) Respondent did not update its SUO upon completion of the City's new WRF in 2011; therefore, the SUO does not contain limits that were technically developed for the City's WRF treatment capacities, as required by 40 CFR 403.5(c) and Part I.A.18 of its 2010 NPDES permit;

- (c) Respondent has not evaluated its permitting process and ensured that it controls the contribution of each industrial user to the POTW through current, unexpired permits, thus ensuring compliance with the federal pretreatment regulations as required by 40 CFR 403.8(f)(1)(iii) and Part I.A.18(c) of its 2010 NPDES permit;
- (d) Respondent's original approved pretreatment program and SUO were developed prior to the construction of the City's WRF; therefore Respondent has not developed and sought approval from EPA for a pretreatment program in accordance with 40 CFR 403.8(a) and Part I.A.18 of its 2010 NPDES permit;
- (e) Respondent has not sampled each Significant Industrial User (SIU) as defined in 40 CFR Part 403.3 at least once each year in accordance with 40 CFR 403.8(f)(2)(v) and Part I.A.18(c) of its 2010 NPDES permit;
- (f) Respondent has not kept adequate records of monitoring events in accordance with 40 CFR 403.12(o) and Part I.A.18 of its 2010 NPDES permit;
- (g) Respondent has not inspected all SIUs at least once each year and adequately documented those inspections as required by 40 CFR 403.8(f)(2)(v) and Part I.A.18(b) of its 2010 NPDES permit;
- (h) Respondent has not evaluated the need for industrial users to develop a slug discharge control plan in accordance with 40 CFR 403.8(f)(2)(vi) and Part I.A.18(c) of its 2010 NPDES permit;
- (i) Respondent has not properly notified each SIU of its status as such and of all requirements applicable to it as a result of such status in accordance with 40 CFR 403.8(f)(2)(iii) and Part I.A.18(c) of its 2010 NPDES permit;
- (j) Respondent has not reviewed and analyzed reports submitted by its Class I Industrial Users as required by 40 CFR 403.8(f)(2)(iv) and Part I.A.18(c) of its 2010 NPDES permit;
- (k) Respondent has not implemented its Enforcement Response Policy for all discharge violations by its Class I Industrial Users as required by 40 CFR 403.8(f)(5) and Part I.A.18(b) of its 2010 NPDES permit; and
- (l) Respondent has not allocated the proper resources and qualified personnel to adequately implement its pretreatment program in accordance with the federal regulations at 40 CFR 403.8(f)(3) and Part I.A.18(c)(iv) of its 2010 NPDES permit.

- 21. The City of North Las Vegas does not have an adequate pretreatment program established in accordance with the General Pretreatment Regulations at 40 CFR §403 which regulations are promulgated pursuant to Section 307 of the Act and implemented through the Respondent's Nevada NPDES permit.
- 22. Based on the paragraphs above, Respondent is in violation of conditions implementing Section 307 of the CWA contained in its NPDES permit issued under the authority of Section 402 of the CWA, as well as regulations implementing the CWA, and of Section 301 of the CWA.

ORDER

Based upon the foregoing and pursuant to the authority of Section 309(a)(3) of the CWA, it is hereby **ORDERED that:**

- I. By **April 15, 2016**, the Respondent shall develop and submit to EPA for approval a complete Industrial Pretreatment Program ("IPP") submission in accordance with 40 C.F.R. §§403.8(f) and 403.9(b). Specifically, the Respondent shall comply with the following requirements in accordance with the schedule set forth below. Upon receipt of comments from EPA on any of the items submitted below, Respondent shall modify the deliverable accordingly for subsequent submission of the complete IPP to the City Council and then to EPA as a final package by April 15, 2016. Submission of documents in accordance with each requirement below shall be due on the date specified regardless of whether or not comments or approval have been received from the EPA on any other previous requirement.
 - A. By **October 1, 2015**, the Respondent shall submit an IPP inventory list of all non-domestic users, including current information on the source, nature and volume of the discharges. The submission shall include a list of specific users and criteria based on which the Respondent identifies the specific users that will require a control mechanism.
 - B. Respondent shall develop local discharge limits using site specific data in accordance with 40 C.F.R. §403.5, and shall comply with the schedule below:
 - (1) By **November 1, 2015**, the Respondent shall submit a preliminary report that shall include:
 - i. a description of POTW processes, design criteria, and average/peak loadings;
 - ii. a summary of sampling data for local limit development;
 - iii. an analysis of pollutants of concern ("POCs") with an explanation for selection of the specific POCs; additional POCs may be identified from additional sampling;
 - iv. a summary of the criteria used for the calculation of headworks based on the Respondent's current NPDES permit, Nevada water quality standards, sludge standards, any applicable air regulations, and worker health and safety considerations;
 - v. a presentation of the documented historical loadings from the POTW's industrial users discharging to the collection system including hauled wastewater users;
 - vi. a presentation of the loadings from uncontrollable (domestic) sources;
 - vii. a strategy for the POTW's use of data that is below detection limits;
 - viii. a summary of the inhibition thresholds for the POTW; inhibition occurs when pollutant levels in a POTW's wastewater or sludge cause operational problems for biological treatment processes involving secondary or tertiary wastewater treatment and alter the POTW's ability to adequately remove BOD, TSS, and other pollutants.
 - (2) By **December 1, 2015**, the Respondent shall submit to EPA a draft comprehensive Headworks Analysis Report for local limits developed in accordance with 40 C.F.R. §403.5(c) and include:
 - i. a summary of sampling data for local limit development;

- ii. a summary of the removal efficiencies for the POTW based on site-specific data and/or values from EPA's "Local Limits Development Guidance" ("Guidance") (July 2004, EPA 833-R-04-002A) (http://water.epa.gov/polwaste/npdes/pretreatment/upload/final_local_limits_guidance.pdf), including the following:
 - (a) in calculating removal efficiencies, site-specific data cannot be used unless a minimum of five (5) sample results are available;
 - (b) sample results cannot be used in the analysis if both influent and effluent values are below detection limits;
 - (c) for non-detectable effluent values to be used, the influent and effluent samples must have same detect limits;
 - (d) where site-specific values are not usable, the Respondent shall use removal efficiencies provided in the Guidance;
 - (e) where site-specific values cannot be used, and the Guidance does not provide values, the Respondent can use data from EPA's Risk Reduction Engineering Laboratory (RREL) Treatability Database;
 - 1. If no sedimentation data is available in the database, the Respondent shall assume zero percent (0%) removal efficiency through primary treatment;
 - 2. Respondent shall assume that only removal efficiencies for values within the zero to one hundred (0 to 100) microgram per liter ($\mu\text{g/l}$) range are valid for toxics.
 - iii. a calculation of the Maximum Allowable Headworks Loads (MAHLs) for POCs that will prevent pass-through and interference;
 - iv. a calculation of the Maximum Allowable Industrial Loads (MAILs) for POCs that subtracts loadings from the MAHLs based on data uncertainty, area growth, and domestic loading; and
- (3) By **January 1, 2016**, the Respondent shall submit to EPA a final comprehensive Headworks Analysis Report for local limits developed in accordance with 40 C.F.R. §403.5(c) based on the draft report in Paragraph B.(2) and any resulting comments from EPA.
- C. By **December 1, 2015**, the Respondent shall submit to EPA a detailed description of its program structure and procedure for administering a program which meets all the requirements found at 40 C.F.R. §403.8 pertaining to control mechanism and compliance monitoring. In accordance with 40 C.F.R. §403.9(b)(1) and (2), the submission shall include:
- (1) A statement from the City Attorney that the POTW has the legal authority to carry out the programs described in 40 C.F.R. §403.8, as required by 403.8 (f)(1);

(2) A copy of any statutes, ordinances (including, but not limited to sewer use ordinances), regulations agreements, or other authorities relied upon by the POTW for its administration of the program;

(3) An updated sewer ordinance that identifies the City's WRF as a wastewater treatment facility in its "system" as defined in Section 13.28.025 of the City's SUO; and

(4) An updated sewer ordinance that includes required streamlining provisions promulgated by EPA on October 14, 2005 in 40 CFR Part 403. These required changes include:

i. 40 CFR 403.8(f)(1)(iii)(B)(6)—clarification that slug control requirements must be referenced in SIU control mechanisms.

ii. 40 CFR 403.8(f)(2)(viii)(A–C) —revisions to the SNC definition.

iii. 40 CFR 403.12(g)—modifications to the sampling requirements and clarification of the requirement to report all monitoring results.

iv. 40 CFR 403.8(f)(2)(vi)—provision requiring SIUs to notify the POTW immediately of any facility changes affecting the potential for a slug discharge.

- D. By **January 1, 2016**, the Respondent shall submit to EPA an Enforcement Response Plan with detailed procedures describing how the City of North Las Vegas will investigate and respond to instances of industrial user noncompliance.
- E. By **January 1, 2016**, the Respondent shall submit a funding plan that shows adequate funding to support the program. The plan shall include an organization chart, estimated cost of the program, cost recovery method, funding levels and staffing to implement the program.
- F. By **January 1, 2016**, the Respondent shall submit updated multi-jurisdictional agreements with any other jurisdictions as necessary (e.g., Clark County, City of Las Vegas, etc). These agreements should detail which jurisdiction is responsible for implementing and enforcing each element of the pretreatment program.
- G. By **March 1, 2016**, the City of North Las Vegas shall submit an Industrial Pretreatment Program to the City Council for approval.
- H. By **April 15, 2016**, the City of North Las Vegas shall submit to EPA a complete Industrial Pretreatment Program for approval.
- I. Beginning on October 1, 2015 and continuing on a quarterly basis until all the above conditions are satisfied, the Respondent shall submit a report of progress and a written notice of compliance or noncompliance with conditions to Ms. Michelle Josilo at the address listed below. In the case of noncompliance, the notice shall include the cause of the noncompliance, any remedial actions taken, and the time it will take to complete the required action.

- II. Respondent shall ensure compliance with conditions as set forth in its NPDES permit and the General Pretreatment Regulations at 40 CFR Part 403 and address deficiencies identified in the inspection report.

- III. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 CFR § 122.22, be sent by certified mail or its equivalent to:

Ms. Michelle Josilo
Water Section I (ENF 3-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

- IV. All reports submitted pursuant to this Order shall be signed by a principal executive officer, ranking elected official or duly authorized representative of the agency [as specified by 40 CFR § 122.22(b)(2)] and shall include the following statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- V. General Provisions.

- A. This Order shall be binding upon the Respondent and its officers, directors, agents, employees, contractors, successors, and assigns.
- B. This Order is not and shall not be interpreted to be a NPDES permit under Section 402 of the Act, [33 U.S.C. § 1342]. In addition, this Order shall not in any way extinguish, waive, satisfy, or otherwise affect the Respondent's obligation to comply with the Act or its regulations, as well as any other Federal, State, or local law.
- C. This Order is not deemed an election by EPA to forgo any remedies available to it under the law, including without limitation, any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violations cited in this Order and to enforce this Order.
- D. Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
- E. Requests for information contained with this Order are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 CFR 1320.4(a)(2).
- F. Respondent may not withhold from EPA any information on the grounds that it is confidential business information. However, EPA has promulgated, under 40 CFR Part 2,

Subpart B, regulations to protect confidential business information it receives. A claim of business confidentiality may be asserted in the manner specified by 40 CFR 2.203(b) for all or part of the information requested by EPA. EPA will disclose business information covered by such claim only as authorized under 40 CFR Part 2, Subpart B. If no claim of business confidentiality accompanies the information at the time EPA receives it, EPA may make it available to the public without further notice.

G. Section 309(a), (b), (d), and (g) of the Act, 33 U.S.C. § 1319(a), (b), (d), and (g), provides administrative and/or judicial relief for failure to comply with the CWA. In addition, Section 309(c) of the Act, 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA and for knowingly making false statements.

H. This Order takes effect upon the date of receipt by the City.

Dated this 25th day of June, 2015



Kathleen H. Johnson

Director, Enforcement Division

U.S. Environmental Protection Agency, Region 9

